

**THE STATE BAR OF CALIFORNIA  
REQUEST FOR PROPOSAL**

**ONLINE PAYMENT SERVICES**

This document is a Request for Proposal ("RFP") for a vendor to provide online payment services to facilitate online payment of membership fees by members of the State Bar of California ("the State Bar") on the State Bar's website.

Please submit five (5) copies of your proposal in a sealed envelope no later than 5:00 p.m. on February 7, 2003. All responses to the Request for Proposal must be submitted to:

The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Attention: **Johnvey Hwang**

Any technical questions regarding the RFP may be directed, by e-mail only, to: Johnvey Hwang, Information Technology, The State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, telephone 415/538-2405, e-mail [Johnvey.Hwang@calbar.ca.gov](mailto:Johnvey.Hwang@calbar.ca.gov).

**I. INTRODUCTION**

The State Bar of California ("State Bar") is a public corporation within the judicial branch of state government. Acting as the administrative arm of the California Supreme Court, the State Bar regulates the legal profession and the practice of law. The State Bar's specific duties include examining applicants for admission, formulating rules of professional conduct, disciplining members for misconduct, preventing the unlawful practice of the law, and certifying lawyers as legal specialists. All lawyers admitted to practice in California are required to be members in order to practice law.

The State Bar is seeking proposals for an online payment service ("OPS") to permit its members to pay fees, including annual membership fees, and its members and the general public to pay for services and products through the State Bar's website at its San Francisco data center (<http://www.calbar.ca.gov>).

The State Bar charges its members an annual fee, which is currently set at \$390 for active members and \$50 for inactive members. There are approximately 140,000 active members and approximately 40,000 inactive members. The State Bar would like its members to be able to pay this annual fee online, through their checking or saving accounts or with credit cards. In addition to online payment of annual dues, the State Bar would like to offer online payment for all of its other transactions. Some examples of other State Bar transactions in which fees are involved

are: bar examination registration, moral character background checks, pro hac vice registration, first year law student registration, sales of publications, and certification as a legal specialist.

In accordance with the State Bar's procurement policies, all contracts in excess of \$50,000 are subject to formal competitive bidding. As a governmental agency, the State Bar typically receives governmental pricing and contract terms and conditions.

## **II. GENERAL INFORMATION**

### **A. Submission Requirements**

The submission requirements for the RFP are detailed below. Please submit five (5) copies of your proposal. Any proposal will constitute an irrevocable offer for 60 (sixty) business days following the deadline for its submission.

Responses to the RFP must contain the following information:

- 1.) Qualification statement of proposer (including description of similar installation of services and products). Please specifically address the ability of the proposer to supply, maintain, and support such services and products in both the San Francisco and Los Angeles offices, with or without the aid of a subcontractor. If the successful proposer chooses to use a subcontractor, the subcontractor, using the same criteria, must submit a qualification statement.
- 2.) History of proposer (and subcontractor if applicable), including identity and qualifications of project director and other staff proposed to work on project.
- 3.) Financial history of proposer, including proof of financial solvency and stability (e.g., balance sheets and income statements for one or more years, and documentation showing business plan, market position, and strategic partnerships.)
- 4.) References from organizations that have used proposer's services for similar projects/installations and have been customers for a minimum of 12 months.
- 5.) Evidence that proposer, if a corporation, is in good standing and qualified to conduct business in California, and copies of business licenses, professional certifications and other credentials.
- 6.) An overall description of the chronology of implementing the OPS, describing the project flow for accomplishing the required work, including a time line and deadlines for all tasks.
- 7.) A detailed response to the list of requirements contained in Attachment A.
- 8.) A bid covering all costs and compensation. The bid should also provide a detailed breakdown of costs for all services and goods proposed.

## B. Rejection of Proposals

**The State Bar reserves the right to reject any or all proposals in whole or in part for any reason without incurring any cost or liability whatsoever.** All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect will in no way modify the RFP or excuse a proposer from full compliance with the RFP requirements.

All proposals may be rejected in any case where it is determined that the proposals are not actually competitive, or where the cost is not reasonable.

Proposals may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

## C. Evaluation Process and Highest Scored Proposer

An evaluation team will review in detail, under the criteria detailed below, all proposals that are received to determine the highest scored proposer ("HSP").

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's assessment of the quality and performance of the services and any products proposed, and cost.

During the evaluation process, the State Bar may require a proposer's representative to answer questions with regard to the proposal and/or require certain proposers to make a formal presentation to the evaluation team and/ or the State Bar Senior Executive Team. Failure of a proposer to document or substantiate the claims made in its proposal may be sufficient cause for deeming a proposal non-responsive.

The following criteria will be used in reviewing and comparing the proposals and in determining the HSP. The weight to be assigned to each criterion appears following each item:

Responsiveness of proposal to original [specifications](#) and requirements described in the RFP, including whether the proposer has agreed to the contracting requirements set forth in Section IV (30%).

The quality and performance of the service and any products to be provided by the proposer, including responsiveness and quality of customer service (15%).

The ability of the vendor to perform the contract in a timely manner, including demonstrated

success in projects with similar requirements and any other contracts with the State Bar (15%).

The financial viability of the vendor as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (10%).

The total cost of the proposal solution. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (30%).

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and sent by facsimile and regular mail to proposers on or about February 14, 2003 of the Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by February 21, 2003. The evaluation team will select a winning proposal subject to approvals granted by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Scope of Services and Contracting Requirements provisions detailed below.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP or on any other matter in connection with the selection process should be addressed to [Victor.Rowley@calbar.ca.gov](mailto:Victor.Rowley@calbar.ca.gov).

E. Errors in the RFP

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the proposer should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all potential proposers to whom the RFP was sent.

If prior to the date fixed for submission of proposals, a proposer knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the proposer will bid at its own risk, and if, awarded the contract, will not be entitled to additional compensation or time by reason of the error or its later correction.

F. Questions Regarding the RFP

Questions regarding the RFP may be addressed in writing to [Johnvey.Hwang@calbar.ca.gov](mailto:Johnvey.Hwang@calbar.ca.gov)

Proposers are specifically directed not to contact any State Bar personnel for meetings, conferences or discussions related to this procurement, other than those specified in this RFP. Unauthorized contact of any State Bar personnel may be cause for rejection of a proposer's RFP response.

All questions and answers regarding the RFP will be shared with all proposers.

If a proposer's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the proposer may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the proposer must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the proposer will be notified.

A proposer who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. Any such request must be submitted to the State Bar no later than January 13, 2003 or the request will not be considered.

#### G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission of proposals by mailing or faxing an addendum to the proposers to whom the RFP was sent. If any proposer determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar no later than three (3) days following the receipt of the addendum or the request will not be considered.

#### H. Withdrawal and Resubmission/Modification of Proposals

A proposer may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by the proposer and must be received by the State Bar prior to the deadline for submitting proposals. The proposer may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins.

#### I. Protest Procedure

A proposer may protest the award if it meets all the following conditions:

1. The proposer has submitted a proposal that it believes to be the most responsive proposal, under the criteria set forth above;
2. The proposer believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. The proposer believes that the State Bar has incorrectly selected another proposer.

A proposer qualified to protest should contact **Victor Rowley** to attempt an informal resolution. If he is unable to resolve the protest to the proposer's satisfaction, the proposer, in order for the State Bar to consider the protest, must file a written protest within five (5) working days of the notice of intention to award contract. The written protest must state the facts surrounding the issue and the reasons the proposer believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

The State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
Attention: Sam Quan

A receipt should be requested for hand-delivered mail.

Protests received by the deadline will be reviewed and decided by the State Bar's Award Protest Team within 30 days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

J. News Releases/Public Communications

Public communications of any nature pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

K. Disposition of Materials

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the proposer. One copy of each proposal will be retained for official files and it will become a public record. When necessary, specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. Except to the extent required by law, including but not limited to an audit or the issuance of a subpoena or other validly issued administrative or judicial demand, the proposer's consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, a proposer agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

### III. SCOPE OF SERVICES

A. Problem

The State Bar of California ("State Bar") maintains a Web site for its membership and for the public at <http://www.calbar.ca.gov>. The State Bar wishes to employ online payment technology to collect certain fees and to charge for certain services and products made available through its Web site at the State Bar's San Francisco data center. As an initial phase of the project, the State

Bar will offer members an opportunity to pay their annual fees online. The State Bar processes in excess of 150,000 such payment transactions per year. Because the State Bar lacks the resources and expertise required to develop and support online payment technology, it seeks the assistance of a vendor experienced in processing online payments in a reliable and secure manner. Later, the State Bar would like to add online payment capability for all State Bar related payment transactions. The State Bar anticipates entering into 3-year agreement with the HSP. Proposers' cost submissions should include cost projections for the total term of the contract.

**B. Scope of Work**

1. A proposal submitted in response to this RFP must include a completed version of the [Online Payment Services Specifications form](#) set forth in Attachment A. The completed form must indicate whether each specification can be met; must provide a technical and functional explanation of the manner in which each specification will be met; and must specify all costs. Explanations may be cross-referenced if appropriate. Proposals may also include information on additional functions that are not included in the list of specifications. Such information should be clearly identified as supplemental.
2. A proposal must set forth an Acceptance Testing plan that specifies the criteria for and consequences of completing or failing Acceptance Testing. Successful completion of Acceptance Testing must be tied to any schedule of payments in any agreement for services. In the event of failure of Acceptance Testing, the State Bar may at its sole discretion require restarting some or all of the testing, or may rescind the agreement and receive a full refund of any amounts already paid.

**CRITICAL DATES**

Release of RFP	January 3, 2003
Last date for requests for clarification	January 13, 2003
Deadline for submission of proposals	February 7, 2003 at 5 p.m.
Notice of award of contract (if any)	February 14, 2003
Final selection of HSP (if any)	February 21, 2003

**IV. CONTRACTING REQUIREMENTS**

Upon selection of a vendor, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable.

The State Bar contemplates that, in addition to the terms described above in this RFP, final agreement between the State Bar and the selected vendor will include, without limitation, the following terms. Vendor's agreement to contract on these terms will be presumed unless specifically reserved by Vendor in its proposal.

**A. Time of Essence**

Time is of the essence with respect to Vendor's performance of the services and any products to be provided in the final agreement.

B. Term

The Agreement will remain in effect for three years, unless terminated in accordance with its terms.

C. Warranties and Representations

To the extent that third party manufacturers have made any warranties or other commitments regarding products or services that the Vendor has included in its proposal to the State Bar of California, the Vendor will assign to the State Bar of California all of such manufacturer's warranties and commitments.

Vendor will provide a one-year warranty for all customized applications.

Vendor will warrant and represent that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the highest standards of the industry. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work.

Vendor will warrant that its solution will conform to and be reasonably free of error and/or defects in material and workmanship, and fit for the purpose for which it is to be used. Vendor will, at its sole cost and expense, promptly perform any and all corrections of error that occur as a result of its own, its contractors' or subcontractors' negligence, make any corrections and modifications to the solution necessary or desirable to cure any non-conformity with the [specifications](#), and repair said system or components so as to remedy any defects in material and/or workmanship.

Vendor will represent and warrant that the solution will not infringe any copyright or other proprietary right (including trade secrets) of any third party, and that Vendor has full authority to grant all rights to the State Bar hereunder.

Vendor will represent and warrant that no claim, whether embodied in an action past or present, of infringement of any patent, copyright, trademark, or other intellectual property right, has been made or is pending against vendor or any entity from which Vendor has obtained such rights relative to the proposal presented to the State Bar hereunder.

D. Indemnity Obligations of Vendor

To the fullest extent permitted by law, the Vendor will agree to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns (the "Indemnities") entirely harmless from and against any and all claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation,



attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the Agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Vendor, the Vendor's employees, subcontractors, agents, representatives or assigns (collectively, the "Vendor's Agents") in the performance or non-performance of the professional services required to be performed by the Vendor under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. The Vendor will agree that its obligations under this indemnity will survive the expiration and termination of the Agreement.

The Vendor will defend, indemnify and hold harmless State Bar (its Board of Governors, officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liability, losses or damages or any expenses or costs whatsoever to the State Bar, including reasonable attorneys' fees and costs, as a result of any claims, demands, damages, costs or judgments against the State Bar based on allegations that, as a consequence of the services rendered hereunder, any program or software designed, developed, amended, merged or restructured, or any part thereof, alone or in combination with other programs or software, infringes on any patent or copyright or misappropriates a trade secret. If any such program or software or any part thereof, is held to constitute an infringement or misappropriation, and use of the program or software is enjoined, the Vendor will, at its own expense, either: (1) procure for the State Bar the right to continue to use the program or software or part thereof; (2) replace the program or software with a non-infringing replacement, provided that such replacement does not compromise performance and otherwise meets the State Bar's [specifications](#); or (3) modify the program or software to make it non-infringing, provided that such modification does not compromise performance and otherwise meets the State Bar's specifications.

In the event both the State Bar and Vendor are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Vendor will agree to provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein the State Bar is defended by the Vendor.

E. Insurance Obligations of Vendor

The Vendor will agree to provide and keep in full force and effect during the term of the Agreement, at the Vendor's own cost and expense, the following insurance policies for the joint benefit of the Vendor and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per

occurrence.

3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
4. Professional liability insurance with a limit of at least One Million Dollars (\$1,000,000.00).
5. Fidelity Bond Coverage in the amount of Three Million Dollars (\$3,000,000), with riders that cover Forgery and Alteration and Computer Systems Fraud.

The Vendor will provide the State Bar with true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days of the execution of the Agreement. Each such policy will name the State Bar as an additional insured and will state that the Vendor's policy will be primary and that any insurance carried by the State Bar will be noncontributing with respect thereto. Each such policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If the Vendor fails to secure and maintain insurance policies complying with the provisions of the Agreement, the State Bar may purchase the appropriate insurance policies and the Vendor will pay upon demand the cost of same to the State Bar or the State Bar may terminate this Agreement. In addition to the insurance required to be obtained and maintained by the Vendor, if the Vendor assigns any portion of the duties under this Agreement in accordance with the terms, hereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

The Vendor will immediately notify the State Bar if the Vendor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If the Vendor's commercial general liability insurance contains such restrictive endorsements, the Vendor will have five (5) business days to remove said restrictions. If the Vendor is unable to do so, the State Bar may terminate this Agreement, and will be required to give the Vendor no more than two (2) days' notice of such termination, anything in the Agreement to the contrary notwithstanding.

F. Termination

**1. Appropriation of Funds**

A. The continuation of the Agreement is subject to the appropriation of funds for such purpose by the California State Legislature. If funds to effect such continued payment are not appropriated, Vendor agrees to take back any affected equipment, products, software, or hardware furnished under the Agreement, terminate any services supplied to the State Bar, and relieve the State Bar of any further obligation therefore.

B. The State Bar agrees that if subdivision A above is invoked, equipment

will be returned to Vendor in substantially the same condition in which it was delivered to the State Bar, subject to normal wear and tear. The State Bar further agrees to pay for packing, crating, transportation to the Vendor's nearest facility and for reimbursement to the Vendor for expenses incurred for its assistance in such packing and crating.

## **2. Default by Vendor**

The Agreement may be terminated by the State Bar upon thirty (30) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event the Agreement is terminated due to the default by the Vendor, the Vendor will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and the Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in the Agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by the Vendor's default.

## **3. Automatic Termination**

The Agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party or (b) failure to comply with federal, state or local laws, regulations or requirements.

### **G. Compensation**

Compensation will be conditioned upon completion of services to the satisfaction of the State Bar and will be made on a schedule that provides for a down payment upon execution of the Agreement, a progress payment, and a final payment upon successful completion of acceptance testing.

### **H. Confidentiality and Publicity**

The Vendor will retain all confidential information provided by the State Bar or by users of the OPS in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under this Agreement without the prior written consent of the State Bar or the appropriate user. The State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law. The Vendor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

### **I. Nondiscrimination**

During the performance of this Agreement, The vendor will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin,

ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. The Vendor will comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and applicable regulations promulgated there under (California Administrative Code, Title 2, section 7285.0 et seq.). The Vendor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

J. Assignment/Subcontracting

**1. Assignment.** The Vendor will not assign or transfer its interest, in whole or in part, under the Agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar. The parties acknowledge that the State Bar's obligations under the Agreement primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in this Agreement, provided that such assignment will not become effective, and the State Bar will not be released from its obligations under the Agreement, until such time as the State Bar or the State Bar's assignee makes payment to the Vendor of all fees and payments then due and payable to the Vendor.

**2. Subcontracting.** The Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the services, subject to the approval of the State Bar. The Vendor will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between the Vendor and its subcontractor to be maintained during the term of the Agreement. Any such proposed subcontract will be subject to the written approval of the State Bar prior to award of such subcontract by the Vendor. No subcontract will be approved unless the Vendor provides a written guarantee that the Vendor's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

K. Conflict of Interest

Vendor will immediately notify the State Bar, in writing, of any potential or actual conflicts of interest that arise or exist between or among the State Bar and any other persons and/or entities for whom Vendor provides services.

The State Bar, as a public corporation, is subject to statutorily mandated conflict of interest codes. (See Business and Professions Code section 6036; Government Code sections 82019 and 82048). Vendor will familiarize itself with the State Bar's conflict of interest codes and avoid any and all situations that could result in violation of the provisions of said codes.

L. Alternate Resources

The chosen Vendor must have sufficient alternate available resources so that the services established in the Agreement can be completed on time and so that the OPS can continue

uninterrupted during the term of the Agreement. In the event that use of alternate resources results in additional expense to the State Bar, the Vendor must reimburse the State Bar for all such expense.

M. General Provisions

**1. Force Majeure.** Neither party will be deemed in default of the Agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party (other than the payment of money) results from any significant and material causes beyond its reasonable control and without fault or negligence by such party. Examples of such causes include, but are not limited to, (1) acts of God or public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) embargoes, (9) earthquakes, (10) unusually severe weather, (11) acts of domestic or international terrorism.

**2. Governing Law.** This Agreement will be governed by the laws of the State of California.

**3. Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to the Agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit will be entitled to collect or enforce the judgment. This provision is separate and several and will survive the merger of the Agreement into any judgment.

**4. Arbitration.** Any claim or dispute valued in excess of five thousand Any question, claim or dispute arising out of or in connection with this Agreement is in excess of Five Thousand Dollars (\$5,000.00) will be referred to binding arbitration. Such arbitration will take place before one (1) arbitrator in the City and County of San Francisco, and be conducted in accordance with Part 3, Title 9 of the California Code of Civil Procedure. The arbitrator will be bound to apply legal principles in accordance with California law, without regard to its conflict of laws principals, unless the alleged claim or dispute is otherwise pre-empted by federal law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law, including but not limited to California Government Code section 810 *et seq.* Any arbitration demand made under this clause must be made no later than one year from the accrual of the claim at issue or expiration or termination of the Agreement, whichever occurs first. The cost of the arbitration will be borne equally by the parties and each party will bear its own attorneys' fees and costs. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco.

**5. License.** In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant

to this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and will keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the Vendor is performing the services pursuant to this Agreement.